

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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BROOKLYN COMMUNITY MANAGEMENT LLC,  
GROSS CARE INC. and SUMNER PLACE LLC, d/b/a  
SUMNER HEALTH PROVIDERS,

**AFFIDAVIT OF**  
**CHRISTOPHER MCKAY**

Plaintiffs, 08 CV 168 (B.S.J.)

-against-

NEW YORK CITY DEPARTMENT OF EDUCATION,  
JOEL KLEIN as CHANCELLOR OF THE NEW YORK  
CITY DEPARTMENT OF EDUCATION, AVA J.  
MOPPER as DIRECTOR OF THE OFFICE OF  
RELATED AND CONTRACTUAL SERVICES OF THE  
NEW YORK CITY DEPARTMENT OF EDUCATION,  
DAVID N. ROSS as EXECUTIVE DIRECTOR OF THE  
DIVISION OF CONTRACTS AND PURCHASING OF  
THE NEW YORK CITY DEPARTMENT OF  
EDUCATION, NEW YORK CITY DEPARTMENT OF  
HEALTH AND MENTAL HYGIENE, THOMAS R.  
FRIEDEN M.D. as COMMISSIONER OF THE NEW  
YORK CITY DEPARTMENT OF HEALTH AND  
MENTAL HYGIENE, NEW YORK STATE  
EDUCATION DEPARTMENT, RICHARD P. MILLS as  
COMMISSIONER OF THE NEW YORK STATE  
EDUCATION DEPARTMENT, NEW YORK STATE  
DEPARTMENT OF HEALTH, RICHARD F. DAINES,  
M.D. as COMMISSIONER OF THE NEW YORK STATE  
DEPARTMENT OF HEALTH,

Defendants.

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STATE OF NEW YORK            )  
  ) SS:  
COUNTY OF NEW YORK        )

**CHRISTOPHER MCKAY**, being duly sworn, deposes and says:

1. I am the Director of the Bureau of Non-Public School Payables in the Division of Financial Operations of the New York City Department of Education (“DOE”). As Director, I am responsible for, among other things, the processing of invoices and payments for Special Education Related Service providers.

2. I submit this affidavit in support of the municipal defendants’ opposition to plaintiffs’ application for injunctive relief seeking to enjoin DOE to make payments for special education Related Services allegedly provided by plaintiffs, Gross Care Inc. (“Gross Care”) and Sumner Place LLC d/b/a Sumner Health Providers (“Sumner”), from January 9, 2008 until the end of the school year.

3. The statements made herein are based on my personal knowledge, review of documents, and conversations with current personnel of DOE.

4. In my capacity as Director, I have access to computerized records of vendor approvals issued pursuant to Related Service Authorization (“RSA”) agreements. Information from these approvals is entered into DOE’s Financial systems by the local Committee on Special Education (“CSE”) and is used by my office to generate payments to independent providers directly or to their agency. These records include, among other things, the names of the children receiving services, the service(s) approved, service start dates, therapist’s names, (where applicable) the agency provider name, and the date when the approval record was entered into the system.

5. I examined these records to ascertain the number of approvals entered by by CSEs for Related Services provided by Gross Care and Sumner. As of January 16, 2007, five hundred eighty three (583) approvals for three hundred and eight students (308) have been

entered into the system. Of those five hundred eighty three (583) approvals, two hundred eighty-one (281) have been entered into the system since December 12, 2007.

6. I also examined invoice records maintained by my office to determine the amount of billings generated by Gross Care and Sumner to date. Vendors can generate an invoice though a data entry system but, in order for DOE to remit payment, the Related Service provider must submit, to this office, a hard copy of such invoice. My office's records show that Sumner has submitted billings totaling \$40,725 but only submitted hard copy invoices for these billings in the amount of \$23,062.50. Gross Care has generated \$64,266.81 in total billings but only submitted hard copy invoices in the amount of \$3,892.50.

  
CHRISTOPHER MCKAY

Sworn to before me this  
17<sup>th</sup> day of January, 2008

  
NOTARY PUBLIC

JOHN G. CAHALIN  
Notary Public, State of New York  
No. 4874105  
Qualified in Suffolk County  
Commission Expires Oct. 20, 2010